



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-88
October 6, 2003

INTERAGENCY ACQUISITION APPROVALS

BACKGROUND: This PN revises the NASA FAR Supplement (NFS) to establish a five-year limitation on interagency acquisitions, and requires determinations and findings (D&Fs) for interagency acquisitions to identify the period of performance and whether the acquisition is for a non-competitive follow-on for the same requirement with the same servicing agency.

ACQUISITIONS AFFECTED BY CHANGES: Interagency acquisitions.

ACTION REQUIRED BY CONTRACTING OFFICERS: Whenever an individual or successive non-competitive interagency orders will exceed five years the approval of a deviation by either the Center Director or the Assistant Administrator for Procurement will be required. In addition, D&Fs for all interagency acquisitions will require the identification of the period of performance and whether the acquisition is for a non-competitive follow-on for the same requirement with the same servicing agency.

CLAUSE CHANGES: This PN makes no changes to clauses or provisions.

PARTS AFFECTED: Changes are made in Part 1817.

REPLACEMENT PAGES: You may use the enclosed pages to replace 17:5 through 17:9.

TYPE OF RULE AND PUBLICATION DATE: The PN was published as a final rule in the Federal Register (68 FR 57629) on October 6, 2003.

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Enclosures

1817.7002-4 Contract clause.

The contracting officer shall insert the clause at 1852.217-70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71--Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from sale to the acquisition of similar property for replacement purposes. The transaction must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NPG 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101-46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

Subpart 1817.72--Interagency Transactions

1817.7201 Policy.

(~~aa~~) The Space Act (42 U.S.C. 2473) applies to NASA interagency acquisitions except those for the NASA Office of Inspector General acquired under the authority of the Inspector General Act of 1978 (5 U.S.C. Appendix III). NASA has elected to conform its implementation of the Space Act and the Inspector General Act to the requirements of the Economy Act (see FAR 17.5).

~~—(b) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years.~~

~~—(c) Requests for deviation from the five year limitation in paragraph (b) of this section shall require the approval of the Center Director if the estimated value of the order is \$5 million or less, or the Assistant Administrator for Procurement (Code HS) if the estimated value of the order exceeds \$5 million. Requests for deviation shall address:~~

~~—(1) Why more than five years is required;~~

~~—(2) Why the work must be performed by the same servicing agency; and~~

~~—(3) How long beyond the current order the requirement is expected to continue.~~
(b) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years.

(c) Requests for deviation from the five year limitation in paragraph (b) of this section shall require the approval of the Center Director if the estimated value of the order is \$5 million or less, or the Assistant Administrator for Procurement (Code HS) if the estimated value of the order exceeds \$5 million. Requests for deviation shall address:

—(1) Why more than five years is required;

—(2) Why the work must be performed by the same servicing agency; and

—(3) How long beyond the current order the requirement is expected to continue.

1817.7202 Determinations and findings requirements.

(a) Interagency acquisitions shall be supported by a Determination and Finding (D&F) equivalent to that required for Economy Act transactions (see FAR 17.503). This requirement applies to all purchases of goods or services under contracts entered into or administered by agencies other than NASA including the Military Departments. The Space Act shall be cited as authority for all NASA interagency acquisitions except that the Inspector General Act shall be cited as the authority for interagency acquisitions for the NASA Office of Inspector General.

(b) To satisfy the D&F requirement identified in FAR 17.503(a)(2), current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

~~(c) In addition to the requirements in FAR 17.503, the D&F must identify the period of performance and whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency. (See 1817.7201(b).)~~

(c) In addition to the requirements in FAR 17.503, the D&F must identify the period of performance and whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency. (See 1817.7201(b).)

(d) The determination described in paragraph (a) of this section is not required for contracts awarded under the Space Act to Government agencies pursuant to a Broad Agency Announcement when a review of the acquisition records would make it obvious that the award is not being used as a method of circumventing regulatory or statutory requirements, particularly FAR Part 6, Competition Requirements (e.g., when a significant number and value of awards made under the BAA are made to entities other than Government agencies).

(ee) All D&F's for a servicing agency not covered by the FAR shall be approved by the Assistant Administrator for Procurement.

1817.7203 Ordering procedures.

To satisfy the ordering procedures in FAR 17.504(b)(4), all payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient.

Subpart 1817.73--Phased Acquisition

1817.7300 Definitions.

(a) **Down-selection.** In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) **Phased Acquisition.** An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) **Progressive Competition.** A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer

contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7301 Down-selections in phased acquisitions.

1817.7301-1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to subsequent phase award(s), the decision to use a down-selection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7301-4 and 1817.7301-5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205 and 1804.570-2.

1817.7301-2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7301-3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7301-4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsisized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Competitions for identified subsequent phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1817.7301-5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsisized in accordance with FAR 5.201 and 5.203.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7301-5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of FAR 52.215-1, Instructions to Offerors -- Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

- (6) Any representations or certifications, if required.
- (7) Any other required contract updates (e.g., small and small disadvantaged business goals).
- (e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217-71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1817.7301-5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217-72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1817.7301-5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

